

ESTTA Tracking number: **ESTTA258406**

Filing date: **01/02/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Neurim Pharmaceuticals (1991) Ltd.
Granted to Date of previous extension	01/21/2009
Address	8 Hanechoshet Street Tel Aviv, 69710 ISRAEL

Attorney information	Lawrence E. Abelman Abelman, Frayne & Schwab 666 Third Avenue 10th Floor New York, NY 10017-5621 UNITED STATES ehalstead@lawabel.com Phone:212-949-9022
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Applicant Information

Application No	77334797	Publication date	09/23/2008
Opposition Filing Date	01/02/2009	Opposition Period Ends	01/21/2009
Applicant	Nzyma, LLC P.O. Box 278 Pagosa Springs, CO 81147 UNITED STATES		

Goods/Services Affected by Opposition

Class 005. All goods and services in the class are opposed, namely: Dietary and nutritionally fortified food products adapted for medical use, namely, soft and hard chews, nutritional bars and snack bars, powdered shakes and drinks
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Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2790571	Application Date	07/29/2002
Registration Date	12/09/2003	Foreign Priority Date	NONE
Word Mark	CIRCADIN		

Design Mark	CIRCADIN
Description of Mark	NONE
Goods/Services	Class 005. First use: Pharmaceutical preparation for the treatment of sleeping problems

Attachments	76435551#TMSN.gif (1 page)(bytes) CIRCARDIA Notice of Opp.pdf (4 pages)(126395 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/lea/
Name	Lawrence E. Abelman
Date	01/02/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application No. 77/334797
Published September 23, 2008

Neurim Pharmaceuticals,

Opposer,

v.

Nzyme, LLC,

Applicant

Opposition No.

NOTICE OF OPPOSITION

Neurim Pharmaceuticals, a corporation organized and existing under the laws of Israel, with an office at 8 Hanechoset Street, Tel Aviv, Israel 69710, believes that it will be damaged by registration of the mark shown in Application Serial No. 77/334797 and hereby opposes same.

As grounds for opposition, it is alleged that:

1. Applicant is seeking to register the mark CIRCARDIA for “dietary and nutritionally fortified food products adapted for medical use, namely soft and hard chews, nutritional bars and snack bars, powdered shakes and drinks” in Class 5.

2. Opposer is the owner of all right, title and interest in the trademark CIRCADIN, Reg. No. 2790571 in Class 5 for “pharmaceutical preparation for the treatment of sleeping problems.” A copy of this registration is attached herewith.

3. Applicant filed its intent to use application on November 20, 2007.

4. Since the date of registration of its CIRCADIN mark, Opposer has maintained a bona fide intent to commercialize use of the mark in U.S. commerce and has been actively involved in seeking approval to do so. The fact that commercial use has not yet been made is due to circumstances beyond Opposer's control and is in no way indicative of Opposer's abandonment of its mark. Evidence of Opposer's intent to make commercial use will be made of record during its scheduled testimony period.

5. Applicant's mark is substantially similar to Opposer's mark both visually and phonetically.

6. Applicant's goods are substantially similar to, and are commercially related to, Opposer's goods.

7. Applicant's goods will be marketed to the same consumers via identical trade channels.

8. In view of the virtually identical nature of the respective marks and the commercial relationship between the parties' goods, registration of Applicant's mark is likely to cause consumer confusion, mistake or deception as to the source of Applicant's goods, and therefore it is requested that registration of Applicant's mark be refused under Section 2(d) of the Trademark Act.

WHEREFORE, Opposer believes that it will be damaged by the registration of Application Serial No. 77/334797 and respectfully requests that registration be refused and this opposition be sustained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LE Abelman", written over a horizontal line.

LAWRENCE E. ABELMAN
ERICA R. HALSTEAD

*Attorney for Opposer,
Neurim Pharmaceuticals*

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Dated: January 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE OF OPPOSITION was served by first class mail, postage prepaid, this 2nd day of January, 2009 upon the following:

Christopher M. Parent, Esq.
BROWNSTEIN HYATT FARBER SCHRECK, P.C.
410 17th Street
Suite 2200
Denver, CO 80202


ERICA R. HALSTEAD